

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Conlin Strawberry Water Company, Inc., a California corporation (U-177-W), for Authority to Sell and Del Oro Water Co., Inc. (U-61-W), for Authority to Buy the Conlin Strawberry Water Company Water System in Tuolumne County.

Application 05-12-001
(Filed Dec. 2, 2005)

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

Investigation 03-10-038
(Filed Oct. 16, 2003)

**PROTEST
BY THE DIVISION OF RATEPAYER ADVOCATES**

I. INTRODUCTION

Pursuant to Article 12 of the Commission Rules of Practice and Procedure (Rule) 44 et seq., the Division of Ratepayer Advocates (DRA) protests the Application in this proceeding for Commission approval of the sale of the Conlin Strawberry Water Co. (CSWC) to the Del Oro Water Co. (DOWC). Hereafter, Danny Conlin and CSWC are collectively referred to as “the Respondents”; CSWC and DOWC as “the Applicants.”

Stated below are some of the basic facts constituting the grounds for this Protest, a description of the effect of the Application on the ratepayers, and the reasons DRA believes the application is unreasonable, inconsistent with the law, and not in the ratepayers’ interests. ORA respectfully request that the Commission deny the Application with prejudice.

No evidentiary hearings should be held regarding this Application. The Commission has already expended ten years of effort to bring the Respondents into compliance resulting in D. 05-07-010. As the Respondents have previously failed to show, this Application also fails to evidence a bona fide sale of CSWC. If hearings were held, this would thwart the Commission's objectives in D. 05-07-010 to the detriment of the ratepayers.

II. ARGUMENTS AND AUTHORITIES

First, the Commission has unanimously ordered that CSWC be placed in the hands of a court-appointed receiver to be sold, which this Application aims to thwart. Second, the Application is disingenuous. It fails to provide the requisite data (e.g., sales price, financial data) that would indicate an actual sale. Third, the Application would place unreasonable burdens on the ratepayers.

A. No bona fide sale

Shortly after the Proposed Decision (PD) in this matter was issued in April 2005, the Respondents sought to delay the issuance of a Commission decision on the basis that a sale of CSWC was imminent. But neither CSWC nor DOWC presented an Application or sales contract despite Staff requests.

In October 2005, approximately eight months after the PD, the Respondents filed a petition to modify which included a sales contract executed in July 2005. That contract omitted including crucial data, such as a sales price, a legal description of the properties to be sold, and contained inaccuracies and inconsistencies that hardly present an adequate basis for Commission review.

In December 2005, the instant Application was filed including a sales contract unchanged from the version attached to the petition for modification, except for date of execution occurring in November 2005. The requisite data missing in the July 2005 version are still omitted in the November 2005 sales contract.

Therefore, if a sale of CSWC were genuinely intended, it is not shown by the Application. The Respondents have had more than adequate time to prepare a full and

complete Application. Instead their Application raises as many questions as it purports to answer.

As D. 05-07-010 found, Danny Conlin and CSWC have a long history of flouting Commission orders and law. This Application is part of that pattern and practice. If the Commission were to hold hearings on the Application, this would play into the hands of the Respondents to delay as long as possible implementing D.05-07-010. The Commission should not fall for such deceit but instead should deny the Application with prejudice. .

B. Lack of Good Faith

Second, the Application is inconsistent with D. 05-07-010. If the Respondents had proved that a sale of CSWC existed, why did they claim to have a sale but fail to come forward with such proof before the issuance of D.05-07-010 on July 21, 2005. And, if the Application represents a bona fide sale, why have the Respondents not withdrawn their application for rehearing filed on August 22, 2005, which would be mooted by a sale of CSWC? The same applies to the Respondents' petition for modification filed on October 18, 2005, which is based on a purported sale of CSWC.

Since 1995, the Strawberry Property Owners Association (SPOA) has been requesting and waiting for the Commission to place CSWC under a receiver. For the past ten years, the Commission has patiently waited for the Respondents to comply with its orders. The Application 05-12-001 provide no more justification to delay implementing D. 05-07-010 than the Respondents' claims of sale prior to the issuance of D. 05-07-010. The Application is another form of low-grade defiance of Commission authority instead of a good-faith effort to improve conditions for CSWC's ratepayers. Therefore the Commission should deny A. 05-12-001.

C. Harm to Ratepayers

The Application is harmful to the ratepayers. While the sales contract provides for payment of the real estate broker's commission, no provision is made for payment of the reparations ordered by D. 05-07-010. Moreover, for every day that the Respondents can

delay having a Receiver appointed, Danny Conlin and CSWC are collecting Safe Drinking Water Bond Law surcharges from the ratepayers for their personal gain. To entertain the Respondents' Application is only to protract the harm to the ratepayers that D. 05-07-010 is intended to end.

III. CONCLUSION

The Application is a part of the Respondents' continuing pattern and practice of flouting Commission orders. If a bona fide sale were at hand, the Application would not have omitted crucial data. The Respondents' application for rehearing, petition for modification, and their appearance before the Tuolumne County Superior Court belie their claim of having a sale. The Commission and the ratepayers have waited over ten years for a receiver. The Application presents no cause to wait any longer.

Alternatively, if the Commission will not deny the Application at this time, DRA asks that the Commission schedule discovery and an evidentiary hearing on the Application at its earliest practicable date. Meanwhile, the Commission should dismiss the Respondents' application for rehearing and their petition for modification as legally inconsistent with its Application. The Respondents should not be allowed to have it both ways.

Respectfully submitted,

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January 4, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PROTEST BY THE DIVISION OF RATEPAYER ADVOCATES** in **A.05-12-001 et al.** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 4, 2005 at San Francisco, California.

Albert Hill

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.
